



Transportation Committee

**Tuesday, March 14, 2006
3:00 PM - 4:00 PM
404 HOB**

REVISED

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Transportation Committee

Start Date and Time: Tuesday, March 14, 2006 03:00 pm

End Date and Time: Tuesday, March 14, 2006 04:00 pm

Location: 404 HOB

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 963 License Plates by Gannon

HB 1049 Driver's Licenses by Traviesa

HB 1055 Specialty License Plates by Gibson, A.

HB 1077 Motor Vehicle Dealership Operations by Russell

HB 7035 Review under the Open Government Sunset Review Act regarding Motor Vehicle Crash Reports by
Governmental Operations Committee

NOTICE FINALIZED on 03/10/2006 16:03 by Rousseau.Tiffany

BILL #: HB 963 License Plates
SPONSOR(S): Gannon
TIED BILLS: **IDEN./SIM. BILLS:** SB 1450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>		Thompson <u>J.T.</u>	Miller <u>P.M.</u>
2) <u>Transportation & Economic Development Appropriations Committee</u>			
3) <u>State Infrastructure Council</u>			
4) _____			
5) _____			

HB 963 creates the “Organ Donor Awareness” specialty license plate, and establishes an annual use fee of \$25 to be paid by purchasers in addition to license taxes and fees. The annual use fee will be distributed to Transplant Foundation, Inc., to fund patient services, which includes maintaining Transplant House and providing grants to transplant patients, educating the public on the importance of organ donation and funding transplant research.

The fiscal impact of the bill of approximately \$60,000 on the Department of Highway Safety and Motor Vehicles (DHSMV) for implementation of the new specialty license plate will be offset by the application fees paid to DHSMV by the sponsoring organization.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.
STORAGE NAME: h0963.TR.doc
DATE: 3/9/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill appears to increase government in that it requires DHSMV to develop and provide for the manufacture of a new license plate, and therefore requires county tax collectors offices to maintain an appropriate inventory and administer the new plate.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization. Under s. 320.08053, F.S., an organization may seek Legislative authorization for a new specialty license plate by meeting a number of requirements.

An organization is first required to submit to the Department of Highway Safety and Motor Vehicles (DHSMV):

- A request for the plate describing it in general terms;
- The results of a professional, independent, and scientific sample survey of Florida residents indicating that 15,000 vehicle owners intend to purchase the plate at the increased cost;
- An application fee of up to \$60,000 defraying DHSMV's cost for reviewing the application, developing the new plate, and providing for the manufacture and distribution of the first run of plates; and
- A marketing strategy for the plate and a financial analysis of anticipated revenues and planned expenditures.

These requirements must be satisfied at least 90 days prior to the convening of the regular session of the Legislature. Once the requirements are met, DHSMV notifies the committees of the House of Representatives and Senate with jurisdiction over the issue, and the organization is free to find sponsors and pursue Legislative action.

If a proposed specialty plate fails to be enacted by the Legislature, DHSMV returns the application fee and other required documents to the organization. If it passes and becomes law, DHSMV notifies the organization, modifies its computer programming to accommodate the new plate, and requests the laminate manufacturer, 3M Company, to produce a prototype roll-coat. PRIDE, the contracted manufacturer of license plates, embosses and roll-coats sample plates that must be submitted to FHP, the Governor, and the Cabinet for approval. Once approval is given, PRIDE begins full production of the plates and distributes them to the Tax Collectors' Offices for sale to the public.

Discontinuance of an approved specialty license plate occurs only when the number of valid registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is to be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates. According to DHSMV there are currently twenty-two plates that are not meeting the minimum sales requirement and could be discontinued in 2006 if their sales do not increase. If none of these plates meet the minimum sales requirement by next summer, the number of plates offered for sale could be reduced to seventy-eight.

Specialty license plates are distinguished from other types of specialized license plates by the fact that anyone may obtain one by simply paying an additional annual use fee, and by the fact that annual use fees are dedicated to supporting a particular cause or organization. The Legislature has also created a number of specialized license plates that are not specialty plates. These plates differ because the purchaser must be eligible by his or her status to obtain the plate, and because ownership of these plates does not require payment of an annual use fee that is distributed for charitable purposes. These types of "status plates" are referred to in the statutes as special plates, and include: the Governor and Legislator plates; the amateur radio operators plate; the disabled veterans plate; the street rods plate; the National Guard, Pearl Harbor Survivor, Combat-wounded veteran and U.S. Reserve plates; and the Medal of Honor plate.

The statutes provide for all specialty plates within ss. 320.08056 and 320.08058, F.S., and provide for a uniform procedure for approval and authorization in s. 320.08053, F.S. By comparison, other specialized plates (the status or special plates) are created on an ad hoc basis by the Legislature, and the statutes provide for them independently of one another in separate sections. It is unnecessary for a proponent of a special plate to obtain prior approval before seeking Legislative action.

The Legislature has enacted 106 specialty license plates to date, though only 100 are currently available for purchase. Annual use fees for sales of specialty license plates for 2003-2004 totaled \$26,168,581 and for fiscal year 2004-2005 the total was \$29,049,472.90. Since the program's inception in 1986, the DHSMV has collected annual use fees totaling more than \$280 million.

Effect of Proposed Changes

HB 963 directs DHSMV to develop the "Organ Donor Awareness" license plate. A qualified motor vehicle owner may obtain the "Organ Donor Awareness" license plate upon payment of a \$25 annual use fee in addition to the appropriate license taxes and service fees.

Transplant Foundation, Inc., a tax-exempt organization affiliated with the University of Miami, School of Medicine will retain all revenue from the annual use fee to fund patient services, which includes maintaining Transplant House and providing grants to transplant patients, educating the public on the importance of organ donation and funding transplant research. The Transplant House is designed to provide temporary, affordable accommodations to pre and post transplant patients, their family members and care providers who travel to Miami for transplantation. Transplant House is a lodging facility only and does not provide nursing or personal care services.

According to DHSMV, the Transplant Foundation, Inc., has met all the requirements set fourth in s. 320.08058, F.S. with regard to the "Organ Donor Awareness" specialty license plate.

C. SECTION DIRECTORY:

Section 1. Amends s. 320.08056, F.S., providing for a \$25 annual use fee for the "Organ Donor Awareness" license plate;

Section 2. Amends s. 320.08058, F.S., creating the "Organ Donor Awareness" license plate; providing for plate design; providing for annual use fees and other fees; and providing for distribution of annual use fees;

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section below.

2. Expenditures:

See FISCAL COMMENTS section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who elect to purchase these specialty license plates, will be required to pay an annual use fee of \$25 in addition to applicable license taxes and administrative charges. The fee from the "Organ Donor Awareness" license plate will be distributed to the Transplant Foundation, Inc. Proceeds from the sale of this license plate will fund Transplant Foundation, Inc. patient services, which includes maintaining Transplant House and providing grants to transplant patients, educating the public on the importance of organ donation and funding transplant research.

Since it is impossible to determine how many persons will purchase the plates, it is impossible to determine the aggregate impact on the private sector.

D. FISCAL COMMENTS:

Implementation of HB 963 will cost DHSMV approximately \$60,000 in contract programming, development labor, and product purchasing costs for creation of the "Organ Donor Awareness" license plate. This impact is offset by the statutory application fee of \$60,000, which has been submitted to DHSMV by the organization seeking creation of the specialty license plate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 963

2006

A bill to be entitled
An act relating to license plates; amending ss. 320.08056
and 320.08058, F.S.; creating an Organ Donor Awareness
license plate; providing for the distribution of annual
use fees received from the sale of such plates; providing
an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (fff) is added to subsection (4) of
section 320.08056, Florida Statutes, as amended by chapter 2005-
357, Laws of Florida, to read:

320.08056 Specialty license plates.--

(4) The following license plate annual use fees shall be
collected for the appropriate specialty license plates:

(fff) Organ Donor Awareness license plate, \$25.

Section 2. Subsection (58) is added to section 320.08058,
Florida Statutes, as amended by chapter 2005-357, Laws of
Florida, to read:

320.08058 Specialty license plates.--

(58) ORGAN DONOR AWARENESS LICENSE PLATES.--

(a) The department shall develop an Organ Donor Awareness
license plate as provided in this section. The word "Florida"
must appear at the top of the plate, and the words "Organ Donor
Awareness" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to Transplant
Foundation, Inc., a tax-exempt organization under s. 501(c)(3)
of the Internal Revenue Code which is affiliated with the

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2006

29 University of Miami School of Medicine. Transplant Foundation,
30 Inc., shall use the proceeds to provide patient services,
31 including maintaining Transplant House and providing grants to
32 transplant patients, educating the public on the importance of
33 organ donation, and funding transplant research.

34 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1049 Driver's Licenses
SPONSOR(S): Traviesa and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee		Thompson J.T.	Miller P.M.
2) Judiciary Committee			
3) Transportation & Economic Development Appropriations Committee			
4) State Infrastructure Council			
5) _____			

SUMMARY ANALYSIS

HB 1049 requires the court to order the Department of Highway Safety and Motor Vehicles (DHSMV) to withhold the issuance of, or suspend or revoke the driver's license of any person who sells, gives, or serves alcoholic beverages to persons under age 21. The bill exempts alcoholic beverage licensees and employees or agents of a licensee who violate this provision, because they are already regulated under chapter 561 Florida Statutes, relating to alcohol, beverages and tobacco.

The bill provides a time frame for the delay of issuance of a license or the suspension or revocation of a license of not less than 3 months or more than 6 months for the first violation and one year for any subsequent violation. The bill also provides that the court may order the DHSMV to issue a driver's license restricted to business or employment purposes.

The bill would take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government— HB 1049 provides for an additional penalty of a mandatory loss of driver's license between 3 and 6 months for a first offense and 1 year for subsequent violations for adults 21 years or older who knowingly provide alcohol to minors.

B. EFFECT OF PROPOSED CHANGES:

Chapter 322, F.S., relates to the administration of driver's licenses by the DHSMV. Section 322.28, F.S., sets forth the provisions related to suspension or revocation of driver's licenses. A driver's license may be suspended or revoked for various traffic safety related reasons, such as for having a certain number of points for speeding violations or for driving under the influence. A license can also be suspended or revoked for numerous reasons that are not directly related to operating a motor vehicle. Examples include: nonpayment of a criminal case financial obligation, s. 322.245, F.S.; noncompliance with paternity proceeding orders, s. 61.13016, F.S.; not meeting school attendance requirements, ss. 322.091 and 1003.27, F.S.; and passing worthless checks, ss. 322.251 and 832.09, F.S. In addition, a minor's license can be suspended for possession of an alcoholic beverage, ss. 397.251(2)(i) and 562.111(3), F.S.

Section 322.271, F.S., provides that the DHSMV may, in certain circumstances, issue a driver's license restricted to business or employment purposes only to a person who is otherwise qualified for a license and whose license has been suspended or revoked.

Section 562.11(1)(a), F.S., provides that it is unlawful to sell, give, serve or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume alcoholic beverages on a licensed premises. Anyone convicted of a violation of these provisions is guilty of a criminal misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

HB 1049 provides for an additional penalty of a mandatory loss of driver's license for adults 21 years or older who knowingly provide alcohol to minors. The bill amends s. 562.11, F.S., and creates s. 322.057, F.S., to require the court to order the DHSMV to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege of any person who violates the sale to underage persons prohibition in s. 562.11(1), F.S. The bill exempts alcoholic beverage licensees and employees or agents of a licensee who violate this provision, because they are already regulated under chapters 561 Florida Statutes, relating to alcohol, beverages and tobacco.

The bill would allow the driver's license of such a person providing alcohol to minors to be suspended or revoked for 3 to 6 months for a first offense and for 1 year for subsequent violations. The bill also provides that the court may order DHSMV to issue a business or employment only restricted license to the person whose license is suspended or revoked.

C. SECTION DIRECTORY:

Section 1. amends s. 562.11, F.S., providing for withholding of the issuance of, or suspension or revocation of the driver's license or driving privilege of any person other than a chapter 561, F.S., licensee, who provides alcoholic beverages to a person under the age of 21;

Section 2. amends s. 322.057, F.S., requiring a court to order the DHSMV to withhold the issuance of, or suspend or revoke, the driver's license of person's providing alcoholic beverages to persons under

the age of 21; providing that licensees under chapter 561 or an employee or agent of such licensee is exempt from this provision; allowing hardship licenses to be issued to persons in violation of this provision and otherwise qualified for a license, and

Section 3. provides that the bill takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the DHSMV, this bill may generate additional revenue as a result of reinstating driving privileges of persons suspended or revoked pursuant to this bill. However, the number of individuals to be suspended and the amount of revenue to be collected is indeterminate. DHSMV also believes this will require programming modifications to driver license software systems that will be absorbed as part of the normal workload.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following grammatical changes are recommended to HB 1049:

On line 7, the word "to" should be the word "the";

On line 42, the phrase "21 years or age" should be the phrase "21 years of age"

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 1049

2006

A bill to be entitled

An act relating to driver's licenses; amending s. 562.11, F.S.; providing an additional penalty for providing alcoholic beverages to a person under the age of 21; creating s. 322.057, F.S.; requiring a court to order the Department of Highway Safety and Motor Vehicles to withhold to issuance of, or suspend or revoke, the driver's license of certain persons who provide alcoholic beverages to persons under the age of 21; providing for exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 562.11, Florida Statutes, is amended to read:

562.11 Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.--

(1)(a)1. It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises. A person who violates this subparagraph commits ~~Anyone convicted of violation of the provisions hereof is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. In addition to any other penalty imposed for a

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violation of subparagraph 1., the court shall order the
Department of Highway Safety and Motor Vehicles to withhold the
issuance of, or suspend or revoke, the driver's license or
driving privilege, as provided in s. 322.057, of any person
other than a licensee or an employee or agent of a licensee who
violates subparagraph 1.

Section 2. Section 322.057, Florida Statutes, is created
to read:

322.057 Mandatory revocation or suspension of driver's
license for certain persons who provide alcohol to persons under
21 years of age.--

(1) Notwithstanding s. 322.28, the court shall order the
department to withhold the issuance of, or suspend or revoke,
the driver's license of a person 21 years or age or older, other
than a licensee under chapter 561 or an employee or agent of
such licensee, who is found guilty of a violation of s.
562.11(1)(a) for not less than 3 months or more than 6 months
for a violation and 1 year for any subsequent violation.

(2) The court may direct the department to issue a
driver's license restricted to business or employment purposes
only, as provided in s. 322.271, to a person who is otherwise
qualified for a license.

Section 3. This act shall take effect July 1, 2006.

BILL #: HB 1055
SPONSOR(S): Gibson
TIED BILLS:

IDEN./SIM. BILLS: SB 1304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>		Thompson <u>J.T.</u>	Miller <u>P.M.</u>
2) <u>Transportation & Economic Development Appropriations Committee</u>			
3) <u>State Infrastructure Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

Under current law, the annual use fees for the Live the Dream License Plate are distributed to The Dream Foundation, Inc., who retains a portion of the fees for administrative, startup and approval process costs. Thereafter 25 percent is to be used for continuing promotion and marketing of the license plate and concept. The remaining funds are distributed to the following organizations:

- Twenty-five percent to be used as grants for programs that provide research, care, and treatment for sickle cell disease,
- Twenty-five percent to the Florida chapter of the March of Dimes for programs and services that improve the health of babies through the prevention of birth defects and infant mortality,
- Ten percent to the Florida Association of Healthy Start Coalitions for help in decreasing racial disparity in infant mortality, to increase healthy birth outcomes, and for use by local Healthy Start Coalitions,
- Ten percent to the Community Partnership for Homeless, Inc., for programs that provide relief from poverty, hunger, and homelessness.
- Five percent to be used by the foundation for administrative costs directly associated with operations related to the management and distribution of proceeds.

This bill redirects the 25 percent of allocated funds for general grants for research, care, and treatment of sickle cell disease to the Sickle Cell Disease Association of Florida, Inc. The bill will not have a fiscal impact on the Department of Highway Safety and Motor Vehicles. HB 1055 takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Specialty license plates are listed in s. 320.08058, F.S. Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. The legislature has enacted 106 specialty license plates to date, though only 100 are currently available for purchase. Section 320.08056, F.S., specifies annual use fees ranging from \$15 to \$25 for the various specialty plates, which are paid in addition to required license taxes and service charges.

Funds derived from these annual use fees are distributed to an organization or organizations in support of a particular cause or charity signified on the plate's design and designated in s. 320.08058, F.S. This section also provides for the uses of funds derived for each plate from its annual use fee. There is wide variation on the uses of these fees regarding administrative costs and marketing or promotion expenses. For example, the "Support Soccer" license plate allows 25 percent of funds to be used for promotion and marketing and 5 percent to be used for administrative costs; while the "United We Stand" license plate requires that 100 percent of funds be used for airport security grants.

The Dream Foundation, Inc., is dedicated to assisting the indigent and less fortunate through direct and indirect programs and grants. The Foundation's principal mission is to address the increasing problem with respect to access to affordable medical and dental treatment for the underprivileged.

Section 320.008058, F.S., provides the first \$60,000 of revenues generated from the collection of annual fees for the "Live the Dream" specialty plate are to be distributed to The Dream Foundation, Inc., to cover start up and administration costs. All funds distributed thereafter are to be allocated as follows:

- 25 percent to the Live the Dream Foundation, Inc. for marketing and promotional costs associated with the plate;
- 25 percent distributed as grants for research, treatment, and care programs for sickle cell disease;
- 25 percent to the Florida chapter of the March of Dimes for child and infant health programs;
- 10 percent to the Florida Association of Healthy Start Coalition to decrease racial disparity, infant mortality rates, and increase healthy births;
- 10 percent to the Community Partnership for the Homeless to provide relief for poverty, homelessness, and hunger;
- 5 percent to the Live the Dream Foundation, Inc., for administrative costs associated with production, management, and distribution of the proceeds.

The Sickle Cell Disease Association of Florida, Inc. (SCDAF), is a not for profit 501(c) (3) charitable organization. SCDAF serves 16 community based chapters throughout the State of Florida and is one of 41 state based chapters serving the Sickle Cell Disease Association of America. Programs started and operated by SCDAF include:

- Sickle Cell Education and Counseling Program;
- Statewide Sickle Cell Education and Counseling Program;
- Resource Center;
- Educational Assistance Program
- Statewide Community Based Outreach Program,
- Screening and Testing Program, and

- Summer Recreation and Enhancement Camp

The Live the Dream license plate¹ was created by the legislature in 2004 by chapter 2004-337, Laws of Florida. This license plate ranks 65th in popularity for the number of license plates currently issued. The Live the Dream license plate has raised \$60,925.00 from July 1, 2004 to present.

HB 1055 redirects the 25 percent of allocated funds for general grants for research, care, and treatment of sickle cell disease to the Sickle Cell Disease Association of Florida, Inc. This bill also provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 320.08058, F.S., providing for redirection of allocated funds from the sale of the Live the Dream license plate.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a significant direct economic impact on the private sector. However, other entities that could potentially receive grant funding from the 25 percent allocation would be affected negatively because they would no longer be able to apply for the grants awarded to programs that provide research, care, and treatment for sickle cell disease. HB 1055 redirects the 25 percent of allocated funds for general grants for research, care, and treatment of sickle cell disease to the Sickle Cell Disease Association of Florida, Inc

D. FISCAL COMMENTS:

None.

¹ S. 320.08058 (49), F.S.,
STORAGE NAME: h1055.TR.doc
DATE: 3/9/2006

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 1055

2006

A bill to be entitled
An act relating to specialty license plates; amending s.
320.08058, F.S.; providing that certain proceeds from the
sale of Live the Dream specialty plates shall be
distributed to the Sickie Cell Disease Association of
Florida, Inc.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (49) of section 320.08058, Florida
Statutes, as amended by chapter 2005-357, Laws of Florida, is
amended to read:

320.08058 Specialty license plates.--

(49) LIVE THE DREAM LICENSE PLATES.--

(a) The department shall develop a Live the Dream license
plate as provided in this section. Live the Dream license plates
must bear the colors and design approved by the department. The
word "Florida" must appear at the top of the plate, and the
words "Live the Dream" must appear at the bottom of the plate.

(b) The proceeds of the annual use fee shall be
distributed to the Dream Foundation, Inc. The Dream Foundation,
Inc., shall retain the first \$60,000 in proceeds from the annual
use fees as reimbursement for administrative costs, startup
costs, and costs incurred in the approval process. Thereafter,
up to 25 percent shall be used for continuing promotion and
marketing of the license plate and concept. The remaining funds
shall be used in the following manner:

1. Twenty-five percent shall be distributed to the Sickie

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29 Cell Disease Association of Florida, Inc., ~~as grants~~ for
 30 programs that provide research, care, and treatment for sickle
 31 cell disease.

32 2. Twenty-five percent shall be distributed to the Florida
 33 chapter of the March of Dimes for programs and services that
 34 improve the health of babies through the prevention of birth
 35 defects and infant mortality.

36 3. Ten percent shall be distributed to the Florida
 37 Association of Healthy Start Coalitions to decrease racial
 38 disparity in infant mortality and to increase healthy birth
 39 outcomes. Funding will be used by local Healthy Start Coalitions
 40 to provide services and increase screening rates for high-risk
 41 pregnant women, children under 4 years of age, and women of
 42 childbearing age.

43 4. Ten percent shall be distributed to the Community
 44 Partnership for Homeless, Inc., for programs that provide relief
 45 from poverty, hunger, and homelessness.

46 5. Five percent of the proceeds shall be used by the
 47 foundation for administrative costs directly associated with
 48 operations as they relate to the management and distribution of
 49 the proceeds.

50 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1077

Motor Vehicle Dealership Operations

SPONSOR(S): Russell

TIED BILLS:

IDEN./SIM. BILLS: SB 2682(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee		Pugh <u>BJP</u>	Miller <u>P.M.</u>
2) Civil Justice Committee			
3) State Infrastructure Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

Chapter 320, F.S., provides for the licensing of automobile dealers and automobile manufacturers, distributors, and importers, and also regulates numerous components of franchise contracts they enter into to do business in the state of Florida.

HB 1077 makes a number of changes to this chapter, including:

- Requiring a licensed manufacturer, importer, or distributor to repurchase certain inventory and business-related equipment from franchised motor vehicle dealers whose franchises have been terminated. If the manufacturer, distributor, or importer fails to do this as specified, it faces sanctions from the state Department of Highway Safety and Motor Vehicles (DHSMV).
- Specifying new requirements for a licensed manufacturer to open or reopen a dealership without being subject to protest by motor vehicle dealers.
- Limiting a licensed manufacturer's ability to prohibit a franchised dealer from selling his or her dealership to a new owner who plans to relocate it, if certain requirements are met.
- Clarifying various definitions and measurement of geographic boundaries

HB 1077 raises no apparent constitutional or other legal issues. It has no fiscal impact on the state or local governments.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – HB 1077 creates additional requirements and obligations on automobile manufacturers regarding aspects of their agreements with franchised motor vehicle dealers in Florida.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

Chapter 320, F.S., provides for the licensing of automobile dealers and automobile manufacturers and regulates the franchise relationship between franchised dealers and the manufacturers. Section 320.605, F.S., states:

“It is the intent of the Legislature to protect the public health, safety, and welfare of citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.”

Section 320.27, F.S. defines “franchised motor vehicle dealer” as “any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1).”

Based on the most recent available DHSMV records, the state has 1,497 franchised motor vehicle dealers and 355 licensed vehicle manufacturers.

The requirements regulating the business relationship between franchised motor vehicle dealers and automobile manufacturers, distributors, and importers are primarily in ss. 320.60 -320.071, F.S. These sections of law specify:

- The conditions and situations under which the DHSMV may deny, suspend, or revoke a vehicle manufacturer's license;
- The process, timing, and notice requirements for licensed manufacturers wanting to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a change;
- The procedures a licensed manufacturer must follow if it wants to add a dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in these circumstances;
- The circumstances under which a licensed manufacturer, distributor, or importer may temporarily operate as a licensed vehicle dealer;
- Amounts of damages and fines that can be assessed against licensed manufacturers in violation of statutes;
- The ability of licensed vehicle dealers to seek administrative hearings; and
- DHSMV's authority to promulgate rules to implement these sections of law.

During the 2005 legislative session, Florida franchised motor vehicle dealers supported legislation to amend current statutes to address several issues arising from court decisions that they said had the potential to negatively impact their ability to remain competitive. The legislation was unsuccessful.

Effect of Proposed Changes:

HB 1077 makes a number of changes to existing statutes regulating automobile franchisees in this state. The general impact of the bill is to raise the level of protection for franchised motor vehicle dealers.

The bill:

- Amends s. 320.60(3), F.S., to clarify the existing definition of "demonstrator" by specifying that new vehicles which have been driven by prospective customers qualify as demonstrators.
- Amends s. 320.64, F.S., to create a new cause for a licensed manufacturer, importer, or distributor to have its license denied, suspended, or revoked by DHSMV. The new cause is failing to repurchase within a specific time frame certain vehicles and other property from a dealer upon the voluntary or involuntary termination of that dealer's franchise.

Specifically, licensed manufacturers would be required to: buy back, at net cost, new vehicles with a mileage of 2,000 miles or less; repay the cost of new, unused, undamaged, and unsold parts and accessories in their original packaging and in unbroken lots, with exceptions for sheet metal; pay fair market value for signs, special tools, and other equipment that meet certain conditions; and pay the costs related to packing, storing, loading and shipping these items eligible for repurchase.

The dealer would have 90 days to return the property to the manufacturer, who would have 60 days upon receipt of the items to pay the dealer. These repurchase provisions do not apply in cases where the dealer's franchise is being terminated as a result of dealer selling his or her assets or stock.

Other states already have this provision in their dealer laws, as do some franchise contracts.

- Amends s. 320.642(5), F.S., to make it more difficult for a licensed manufacturer to relocate an existing franchised dealership, and then open a new dealership at the old location without notice or the opportunity for other dealers to protest. The bill requires the manufacturer to meet timing and dealership distance requirements, and specifies that the manufacturer cannot open a new dealership for two years if it is within 4 miles of the old site.
- Creates s. 320.642(7), F.S., to require that all measurements required for the purposes of determining the locations of existing and proposed new dealerships be based on the "geometric centroid." Geometric centroid" is a complex mathematical term that roughly means the center point of, in this case, the dealership's property.
- Amends s. 320.643, F.S., to limit a licensed manufacturer's ability to prohibit a franchised dealer from selling his or her dealership to a new owner who planned to relocate it. Current law addresses the process for franchise transfers, but not transfers and subsequent relocation. The bill specifies that a sale-and-relocation would not be subject to the terms of the existing franchise agreement under certain circumstances. Those circumstances are: the relocation would not have been subject to protest if the same owner was planning it, pursuant to s. 320.642(5), F.S.; the proposed facility satisfies the requirements in effect between the manufacturer and the dealer at the time of the transfer; and the proposed new facility is otherwise an "appropriate location" in terms of its accessibility and convenience to potential customers, its distance from other dealers selling the same line and make of vehicles, and other factors.

HB 1077 would take effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 320.60, F.S., to amend the definition of "demonstrator."

Section 2: Amends s. 320.64, F.S., to specify the types of costs owed to a motor vehicle dealer whose contract has been terminated by a manufacturer.

Section 3: Amends s. 320.642, F.S., to amend criteria determining when a proposed opening or reopening of a motor vehicle dealership is subject to protest.

Section 4: Amends s. 320.643, F.S., to . to address instances where a dealer sells his or her franchise to a new owner who wants to relocate it.

Section 5: Specifies this act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. To the extent HB 1077 protects the rights of existing franchised motor vehicle dealers in cases involving the establishment of new dealerships in a service area, buy-backs of certain inventory and equipment upon franchise termination, and the fate of new ownerships involving transfer, the bill may benefit franchised motor vehicle dealers. These same law changes may create financial costs for licensed manufacturers, distributors, and importers. To the extent that the bill's provisions increase protections for existing franchised motor vehicle dealers, the bill could negatively impact the ability of persons wishing to become licensed and franchised motor vehicle dealers in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to an analysis of HB 1077 because the bill does not require counties or municipalities to expend or raise local funds, nor does it reduce the percentage of state tax revenues shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DHSMV has sufficient rulemaking authority to implement the provisions of HB 1077.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The sponsor plans to file a strike-everything-after-the-clause amendment to conform the House bill to its Senate companion.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to motor vehicle dealership operations;
amending s. 320.60, F.S.; revising the definition of
"demonstrator" for purposes of provisions relating to
manufacturing, importing, and distributing motor vehicles;
amending s. 320.64, F.S.; prohibiting an applicant or
licensee from failing to pay certain compensation amounts
to a motor vehicle dealer after termination of the
franchise agreement; providing exceptions; providing for
certain remedies, procedures, and rights of recovery;
amending s. 320.642, F.S.; revising conditions under which
an opening or reopening of a motor vehicle dealership is
not subject to protest; restricting proposal for a dealer
of the same line-make for a certain period of time after
the opening of a relocated dealership; providing criteria
for measurements of distance between dealer locations;
amending s. 320.643, F.S.; exempting a transferee
proposing to relocate motor vehicle dealership operations
in conjunction with an asset or equity purchase from
franchise agreement location requirements; providing
conditions for the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 320.60, Florida
Statutes, is amended to read:

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320.60 Definitions for ss. 320.61-320.70.--Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(3) "Demonstrator" means any new motor vehicle which is carried on the records of the dealer as a demonstrator and is used by, being inspected or driven by the dealer or his or her employees, or driven by prospective customers for the purpose of demonstrating vehicle characteristics in the sale or display of motor vehicles sold by the dealer.

Section 2. Subsection (35) of section 320.64, Florida Statutes, is renumbered as subsection (36), and a new subsection (35) is added to that section to read:

320.64 Denial, suspension, or revocation of license; grounds.--A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(35) Notwithstanding the terms of any franchise agreement, after termination of a franchise, either voluntarily or involuntarily, the applicant or licensee has failed to pay to the motor vehicle dealer, within 90 days after the effective

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54 date of the termination, cancellation, or nonrenewal, the
55 following amounts:

56 (a) The net cost paid by the dealer for each new motor
57 vehicle in the dealer's inventory with mileage of 2,000 miles or
58 less, exclusive of mileage placed on the vehicle before it was
59 delivered to the dealer.

60 (b) The cost paid by the dealer for each new, unused,
61 undamaged, and unsold part or accessory that:

62 1. Is in the current parts catalogue and is still in the
63 original, resalable merchandising package and in an unbroken
64 lot, except that in the case of sheet metal a comparable
65 substitute for the original package may be used; and

66 2. Was purchased by the dealer either directly from the
67 manufacturer or distributor or was purchased from an outgoing
68 authorized dealer as a part of the dealer's initial inventory.

69 (c) The fair market value of each undamaged sign owned by
70 the dealer that bears a trademark or trade name used or claimed
71 by the applicant or licensee, or a representative of the
72 applicant or licensee, and that was purchased from or at the
73 request of the applicant or licensee, or a representative of the
74 applicant or licensee.

75 (d) The fair market value of all special tools, data
76 processing equipment, and automotive service equipment owned by
77 the dealer that:

78 1. Were recommended in writing by the applicant or
79 licensee or its representative and designated as special tools
80 and equipment;

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81 2. Were purchased from or at the request of the applicant
82 or licensee or its representative; and

83 3. Are in usable and good condition except for reasonable
84 wear and tear.

85 (e) The cost of transporting, handling, packing, storing,
86 and loading any property subject to repurchase under this
87 subsection.

88
89 This subsection shall not apply to terminations, cancellations,
90 and nonrenewals that are implemented as a result of the sale of
91 the assets or stock of the dealer. The dealer shall return the
92 property listed in this subsection to the licensee within 90
93 days after the effective date of the termination, cancellation,
94 or nonrenewal. The licensee shall supply the new vehicle dealer
95 with reasonable instructions on the method by which the new
96 vehicle dealer must return the property to the licensee. The
97 compensation for the property shall be paid by the licensee
98 within 60 days after the tender of inventory and other items,
99 provided the new motor vehicle dealer has clear title to the
100 inventory and other items and is in a position to convey that
101 title to the manufacturer or distributor. In the event the
102 inventory or other items are subject to a security interest, the
103 licensee may make payment jointly to the new motor vehicle
104 dealer and the holder of the security interest.

105
106 A motor vehicle dealer who can demonstrate that a violation of,
107 or failure to comply with, any of the preceding provisions by an
108 applicant or licensee will or can adversely and pecuniarily

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109 affect the complaining dealer, shall be entitled to pursue all
110 of the remedies, procedures, and rights of recovery available
111 under ss. 320.695 and 320.697.

112 Section 3. Subsection (5) of section 320.642, Florida
113 Statutes, is amended, and subsection (7) is added to that
114 section, to read:

115 320.642 Dealer licenses in areas previously served;
116 procedure.--

117 (5) (a) The opening or reopening of the same or a successor
118 motor vehicle dealer within 12 months shall not be considered an
119 additional motor vehicle dealer subject to protest within the
120 meaning of this section, if:

121 1.(a) The opening or reopening is within the same or an
122 adjacent county and is within 2 miles of the former motor
123 vehicle dealer location;;

124 2.(b) There is no motor vehicle dealer within 25 miles of
125 the proposed location or the proposed location is further from
126 each existing dealer of the same line-make than the prior
127 location is from each dealer of the same line-make within 25
128 miles of the new location;;

129 3.(c) The opening or reopening is within 6 miles of the
130 prior location and, if any existing motor vehicle dealer of the
131 same line-make is located within 15 miles of the former
132 location, the proposed location is no closer to any existing
133 dealer of the same line-make within 15 miles of the proposed
134 location; or

135 4.(d) The opening or reopening is within 6 miles of the
136 prior location and, if all existing motor vehicle dealers of the

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same line-make are beyond 15 miles of the former location, the proposed location is further than 15 miles from any existing motor vehicle dealer of the same line-make.

Any other such opening or reopening shall constitute an additional motor vehicle dealer within the meaning of this section.

(b) If an opening or reopening is accomplished pursuant to the terms of this subsection and therefore not considered an additional motor vehicle dealer subject to protest, the licensee shall not propose a motor vehicle dealer of the same line-make which is to be located within 4 miles of the previous location for a period of 2 years after the date of the opening of the relocated dealership.

(7) All measurements required by this section of the distance between two or more existing motor vehicle dealer locations, or between existing motor vehicle dealer locations and a proposed motor vehicle dealer's location, shall be taken from the geometric centroid of the property which encompasses all of the existing or proposed motor vehicle dealer operations.

Section 4. Subsection (5) of section 320.643, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

320.643 Transfer, assignment, or sale of franchise agreements.--

(5) A transferee proposing to simultaneously relocate motor vehicle dealership operations in conjunction with an asset purchase pursuant to subsection (1) or an equity purchase

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165 pursuant to subsection (2) shall not be required to comply with
166 the location requirements of the franchise agreement then in
167 effect and such a proposal shall be subject to this section if:

168 (a) The proposed relocation is a relocation exempt from
169 protest and not considered as an additional motor vehicle dealer
170 pursuant to s. 320.642(5);

171 (b) The proposed dealership's facility satisfies facility
172 requirements in effect between the licensee and the dealer
173 proposing the transfer at the time the transfer is proposed; and

174 (c) The proposed facility is otherwise an appropriate
175 location, taking into account the accessibility and convenience
176 to consumers of the proposed location, the location of the other
177 dealers of the same line-make, and other factors related to the
178 appropriateness of the facility for its proposed use and whether
179 the proposed dealership facility and dealership operations are
180 separate from any other line-makes.

181 Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 PCB GO 06-10 OGSR Motor Vehicle Crash Reports
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 712 (c)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	4 Y, 2 N	Williamson	Williamson
1) Transportation Committee		Pugh (BJP)	Miller P.M.
2) State Administration Council			
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

HB 7035 reenacts the public records exemption for motor vehicle crash reports. Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning parties involved in a crash are confidential and exempt for a period of 60 days. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal, non-recurring positive fiscal impact on state and local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law requires a law enforcement officer to file a written report for a motor vehicle crash if the crash:

- Resulted in death or personal injury;
- Resulted in damage to a vehicle or other property; or
- Rendered the vehicle inoperative and required a wrecker to remove it from traffic.¹

The driver of the vehicle is required to file a written report if a law enforcement officer does not do so.² Supplemental written reports also might be required.³ A driver failing to file the appropriate reports commits a noncriminal traffic infraction that is punishable as a nonmoving violation as provided in chapter 318, F.S. (\$30 penalty).⁴

Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning parties involved in a crash are confidential and exempt⁵ for a period of 60 days after the date the report is filed.⁶ Such reports are immediately available to:

- The party involved in the crash and his or her legal representative, licensed insurance agent, insurer, or person under contract with such insurer to provide claims or underwriting information;
- Prosecutorial authorities;
- Victim services programs;
- Radio and television stations licensed by the Federal Communications Commission;
- Newspapers qualified to publish legal notices;
- Free newspapers of general circulation;⁷ and
- Any local, state, or federal agency.⁸

A person with immediate access to confidential and exempt information contained in such reports must present a valid driver's license or other photo identification, proof of status, or identification that demonstrates his or her qualifications to access such reports. The person also must file a written

¹ Section 316.066(3)(a), F.S.

² Section 316.066(1), F.S.

³ Section 316.066(2), F.S.

⁴ Section 316.066(6), F.S.

⁵ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁶ Section 316.066(3)(c), F.S.

⁷ The following are not newspapers for purposes of the exemption: newspapers intended for members of a particular profession or occupational group; newspapers with the primary purpose of distributing advertising; and newspapers with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes. *Id.*

⁸ *Id.*

sworn statement⁹ with the custodian of such reports attesting that the confidential and exempt information will not be used for commercial solicitation¹⁰ of accident victims or knowingly disclosed to any third party for the purpose of solicitation, during the 60-day period.¹¹

The following persons are guilty of a felony of the third degree¹² for violating the provisions of the exemption:

- An agency employee who willfully and knowingly discloses the confidential and exempt information to an unauthorized person;¹³
- A person without authorized access to such information and who obtains or attempts to obtain the information;¹⁴ and
- A person who uses such information in violation of the sworn statement.¹⁵

Pursuant to the Open Government Sunset Review Act,¹⁶ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

HB 7035 removes the repeal date, thereby reenacting the public records exemption. It makes editorial and conforming changes and reorganizes the section.

The bill removes a clause reiterating the general requirement that an agency granted access to confidential and exempt information must maintain the status of that information. In *Ragsdale v. State*,¹⁷ the Florida Supreme Court held that:

[T]he applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record . . . the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands.¹⁸

In *City of Riviera Beach v. Barfield*,¹⁹ the court stated, “[h]ad the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute.”²⁰ As such, the provision is unnecessary and has been removed, because had the Legislature intended for the confidential and exempt status to evaporate then the Legislature would have stated as much.

⁹ In lieu of the written sworn statement, the custodial agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers provided the contract states the confidential and exempt information will not be used for commercial solicitation. *Id.*

¹⁰ Commercial solicitation does not include the use of a crash report for purposes of publication in a newspaper or a radio or television broadcast. Section 316.066(4), F.S.

¹¹ Section 316.066(3)(c), F.S.

¹² A felony of the third degree is punishable by a term of imprisonment not exceeding five years (s. 775.082(3)(d), F.S.) and a fine not exceeding \$5,000 (s. 775.083(1)(c), F.S.)

¹³ Section 316.066(3)(d), F.S.

¹⁴ Section 316.066(3)(e), F.S.

¹⁵ Section 316.066(3)(f), F.S.

¹⁶ Section 119.15, F.S.

¹⁷ 720 So.2d 203 (Fla. 1998).

¹⁸ *Id.* at 206, 207.

¹⁹ 642 So. 2d 1135 (Fla. 4th DCA 1994), *review denied*, 651 So. 2d 1192 (Fla. 1995). In *Barfield*, Barfield argued that once the City of West Palm Beach shared its active criminal investigative information with the City of Riviera Beach the public records exemption for such information was waived. Barfield based that argument on a statement from the 1993 *Government-In-The-Sunshine Manual* (a booklet prepared by the Office of the Attorney General). The Attorney General opined “once a record is transferred from one public agency to another, the record loses its exempt status.” The court declined to accept the Attorney General’s view. As a result, that statement has been removed from the *Government-In-The-Sunshine Manual*.

²⁰ *Id.* at 1137.

C. SECTION DIRECTORY:

Section 1 amends s. 316.066, F.S., to remove the October 2, 2006, repeal date and make technical or grammatical changes..

Section 2 amends s. 324.051, F.S., to correct a cross-reference.

Section 3 amends s. 921.0022, F.S., to correct a cross-reference.

Section 4 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

HB 7035 may represent a minimal, non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 7035 does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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1 A bill to be entitled

2 An act relating to a review under the Open Government
3 Sunset Review Act regarding motor vehicle crash reports;
4 amending s. 316.066, F.S., which provides an exemption
5 from public records requirements for required motor
6 vehicle crash reports that reveal the identity, home or
7 employment telephone number, or home or employment address
8 of, or other personal information concerning, parties
9 involved in a motor vehicle crash and that are held by any
10 agency that regularly receives or prepares information
11 from or concerning the parties to motor vehicle crashes;
12 reorganizing provisions, making editorial and conforming
13 changes, and removing superfluous language; removing the
14 scheduled repeal of the exemption under the Open
15 Government Sunset Review Act; amending ss. 324.051 and
16 921.0022, F.S.; correcting cross-references; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 316.066, Florida Statutes, is amended
22 to read:

23 316.066 Written reports of crashes.--

24 (1) The driver of a vehicle which is in any manner
25 involved in a crash resulting in bodily injury to or death of
26 any person or damage to any vehicle or other property in an
27 apparent amount of at least \$500 shall, within 10 days after the
28 crash, forward a written report of such crash to the department

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or traffic records center. However, when the investigating officer has made a written report of the crash pursuant to subsection ~~paragraph~~ (3)(a), no written report need be forwarded to the department or traffic records center by the driver.

(2) The receiving entity may require any driver of a vehicle involved in a crash of which a written report must be made as provided in this section to file supplemental written reports whenever the original report is insufficient in the opinion of the department and may require witnesses of crashes to render reports to the department.

(3)(a) Every law enforcement officer who in the regular course of duty investigates a motor vehicle crash:

1. Which crash resulted in death or personal injury shall, within 10 days after completing the investigation, forward a written report of the crash to the department or traffic records center.

2. Which crash involved a violation of s. 316.061(1) or s. 316.193 shall, within 10 days after completing the investigation, forward a written report of the crash to the department or traffic records center.

3. In which crash a vehicle was rendered inoperative to a degree which required a wrecker to remove it from traffic may, within 10 days after completing the investigation, forward a written report of the crash to the department or traffic records center if such action is appropriate, in the officer's discretion.

(b) ~~However,~~ In every case in which a crash report is required by this section and a written report to a law

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enforcement officer is not prepared, the law enforcement officer shall provide each party involved in the crash a short-form report, prescribed by the state, to be completed by the party. The short-form report must include, ~~but is not limited to:~~

1. The date, time, and location of the crash;
2. A description of the vehicles involved;
3. The names and addresses of the parties involved;
4. The names and addresses of witnesses;
5. The name, badge number, and law enforcement agency of the officer investigating the crash; and
6. The names of the insurance companies for the respective parties involved in the crash.

(c) Each party to the crash shall provide the law enforcement officer with proof of insurance to be included in the crash report. If a law enforcement officer submits a report on the accident, proof of insurance must be provided to the officer by each party involved in the crash. Any party who fails to provide the required information is guilty of an infraction for a nonmoving violation, punishable as provided in chapter 318 unless the officer determines that due to injuries or other special circumstances such insurance information cannot be provided immediately. If the person provides the law enforcement agency, within 24 hours after the crash, proof of insurance that was valid at the time of the crash, the law enforcement agency may void the citation.

(4) (a) (b) One or more counties may enter into an agreement with the appropriate state agency to be certified by the agency to have a traffic records center for the purpose of tabulating

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and analyzing countywide traffic crash reports. The agreement must include: certification by the agency that the center has adequate auditing and monitoring mechanisms in place to ensure the quality and accuracy of the data; the time period in which the traffic records center must report crash data to the agency; and the medium in which the traffic records must be submitted to the agency.

(b) In the case of a county or multicounty area that has a certified central traffic records center, a law enforcement agency or driver must submit to the center within the time limit prescribed in this section a written report of the crash. A driver who is required to file a crash report must be notified of the proper place to submit the completed report.

(c) Fees for copies of public records provided by a certified traffic records center shall be charged and collected as follows:

For a crash report....\$2 per copy.

For a homicide report....\$25 per copy.

For a uniform traffic citation....\$0.50 per copy.

The fees collected for copies of the public records provided by a certified traffic records center shall be used to fund the center or otherwise as designated by the county or counties participating in the center.

(5) (a) (e) Crash reports that ~~required by this section~~ ~~which~~ reveal the identity, home or employment telephone number or home or employment address of, or other personal information

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113 concerning the parties involved in the crash and that ~~which~~ are
 114 held ~~received or prepared~~ by any agency that regularly receives
 115 or prepares information from or concerning the parties to motor
 116 vehicle crashes are confidential and exempt from s. 119.07(1)
 117 and s. 24(a), Art. I of the State Constitution for a period of
 118 60 days after the date the report is filed.

119 (b) Crash ~~However, such~~ reports held by an agency under
 120 paragraph (a) may be made immediately available to the parties
 121 involved in the crash, their legal representatives, their
 122 licensed insurance agents, their insurers or insurers to which
 123 they have applied for coverage, persons under contract with such
 124 insurers to provide claims or underwriting information,
 125 prosecutorial authorities, victim services programs, radio and
 126 television stations licensed by the Federal Communications
 127 Commission, newspapers qualified to publish legal notices under
 128 ss. 50.011 and 50.031, and free newspapers of general
 129 circulation, published once a week or more often, available and
 130 of interest to the public generally for the dissemination of
 131 news. For the purposes of this section, the following products
 132 or publications are not newspapers as referred to in this
 133 section: those intended primarily for members of a particular
 134 profession or occupational group; those with the primary purpose
 135 of distributing advertising; and those with the primary purpose
 136 of publishing names and other personal identifying information
 137 concerning parties to motor vehicle crashes.

138 (c) Any local, state, or federal agency, ~~victim services~~
 139 ~~program, agent, or employee~~ that is authorized to have access to
 140 crash ~~such~~ reports by any provision of law shall be granted such

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141 access in the furtherance of the agency's statutory duties
 142 ~~notwithstanding the provisions of this paragraph. Any local,~~
 143 ~~state, or federal agency, agent, or employee receiving such~~
 144 ~~crash reports shall maintain the confidential and exempt status~~
 145 ~~of these reports and shall not disclose such crash reports to~~
 146 ~~any person or entity.~~

147 (d) As a condition precedent to accessing a crash report
 148 within 60 days after the date the report is filed, a person must
 149 present a valid driver's license or other photographic
 150 identification, proof of status, or identification that
 151 demonstrates his or her qualifications to access that
 152 information, and file a written sworn statement with the state
 153 or local agency in possession of the information stating that
 154 information from a crash report made confidential and exempt by
 155 this section will not be used for any commercial solicitation of
 156 accident victims, or knowingly disclosed to any third party for
 157 the purpose of such solicitation, during the period of time that
 158 the information remains confidential and exempt. In lieu of
 159 requiring the written sworn statement, an agency may provide
 160 crash reports by electronic means to third-party vendors under
 161 contract with one or more insurers, but only when such contract
 162 states that information from a crash report made confidential
 163 and exempt by this section will not be used for any commercial
 164 solicitation of accident victims by the vendors, or knowingly
 165 disclosed by the vendors to any third party for the purpose of
 166 such solicitation, during the period of time that the
 167 information remains confidential and exempt, and only when a

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copy of such contract is furnished to the agency as proof of the vendor's claimed status.

(e) This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section. ~~A law enforcement officer as defined in s. 943.10(1) may enforce this subsection. This exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(6) (a) (d) Any driver failing to file the written report required under subsection (1) or subsection (2) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) Any employee of a state or local agency in possession of information made confidential and exempt by this section who knowingly discloses such confidential and exempt information to a person not entitled to access such information under this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) (e) Any person, knowing that he or she is not entitled to obtain information made confidential and exempt by this section, who obtains or attempts to obtain such information is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) (f) Any person who knowingly uses confidential and exempt information in violation of a filed written sworn

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196 statement or contractual agreement required by this section
197 commits a felony of the third degree, punishable as provided in
198 s. 775.082, s. 775.083, or s. 775.084.

199 ~~(7)~~~~(4)~~ Except as specified in this subsection, each crash
200 report made by a person involved in a crash and any statement
201 made by such person to a law enforcement officer for the purpose
202 of completing a crash report required by this section shall be
203 without prejudice to the individual so reporting. No such report
204 or statement shall be used as evidence in any trial, civil or
205 criminal. However, subject to the applicable rules of evidence,
206 a law enforcement officer at a criminal trial may testify as to
207 any statement made to the officer by the person involved in the
208 crash if that person's privilege against self-incrimination is
209 not violated. The results of breath, urine, and blood tests
210 administered as provided in s. 316.1932 or s. 316.1933 are not
211 confidential and shall be admissible into evidence in accordance
212 with the provisions of s. 316.1934(2). Crash reports made by
213 persons involved in crashes shall not be used for commercial
214 solicitation purposes; however, the use of a crash report for
215 purposes of publication in a newspaper or other news periodical
216 or a radio or television broadcast shall not be construed as
217 "commercial purpose."

218 (8) A law enforcement officer, as defined in s. 943.10(1),
219 may enforce this section.

220 ~~(5) For purposes of this section, a written report~~
221 ~~includes a report generated by a law enforcement agency through~~
222 ~~the use of a computer.~~

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223 ~~(6) Any driver failing to file the written report required~~
 224 ~~under subsection (1) or subsection (2) commits a noncriminal~~
 225 ~~traffic infraction, punishable as a nonmoving violation as~~
 226 ~~provided in chapter 318.~~

227 Section 2. Paragraph (a) of subsection (1) of section
 228 324.051, Florida Statutes, is amended to read:

229 324.051 Reports of crashes; suspensions of licenses and
 230 registrations.--

231 (1)(a) Every law enforcement officer who, in the regular
 232 course of duty either at the time of and at the scene of the
 233 crash or thereafter by interviewing participants or witnesses,
 234 investigates a motor vehicle crash which he or she is required
 235 to report pursuant to s. 316.066(3)~~(a)~~ shall forward a written
 236 report of the crash to the department within 10 days of
 237 completing the investigation. However, when the investigation of
 238 a crash will take more than 10 days to complete, a preliminary
 239 copy of the crash report shall be forwarded to the department
 240 within 10 days of the occurrence of the crash, to be followed by
 241 a final report within 10 days after completion of the
 242 investigation. The report shall be on a form and contain
 243 information consistent with the requirements of s. 316.068.

244 Section 3. Paragraph (c) of subsection (3) of section
 245 921.0022, Florida Statutes, is amended to read:

246 921.0022 Criminal Punishment Code; offense severity
 247 ranking chart.--

248 (3) OFFENSE SEVERITY RANKING CHART

249

Florida	Felony	Description
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	Statute	Degree	
250			(c) LEVEL 3
251	119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
252	316.066 (6) (a) - <u>(d) (3) (d) - (f)</u>	3rd	Unlawfully obtaining or using confidential crash reports.
253	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
254	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
255	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
256	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
257	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
258			

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259	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
260	327.35 (2) (b)	3rd	Felony BUI.
261	328.05 (2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
262	328.07 (4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
263	370.12 (1) (e) 5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
	370.12 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.

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264	376.302 (5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
265	400.903 (3)	3rd	Operating a clinic without a license or filing false license application or other required information.
266	440.105 (3) (b)	3rd	Receipt of fee or consideration without approval by judge of compensation claims.
267	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
268	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
269	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
270	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.

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271	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
272	697.08	3rd	Equity skimming.
273	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.
274	796.05 (1)	3rd	Live on earnings of a prostitute.
275	806.10 (1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
276	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.
277	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
278	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
279	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less

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			than \$10,000.
280	815.04 (4) (b)	2nd	Computer offense devised to defraud or obtain property.
281	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
282	817.233	3rd	Burning to defraud insurer.
283	817.234 (8) (b) - (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
284	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
285	817.236	3rd	Filing a false motor vehicle insurance application.
286	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
287	817.413 (2)	3rd	Sale of used goods as new.
288			

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289	817.505 (4)	3rd	Patient brokering.
290	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
291	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
292	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
293	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
294	843.19	3rd	Injure, disable, or kill police dog or horse.
295	860.15 (3)	3rd	Overcharging for repairs and parts.
296	870.01 (2)	3rd	Riot; inciting or encouraging.
	893.13 (1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s.

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297	893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs).		
298	893.13 (1) (d) 2.	2nd	Sell, manufacture, or deliver s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs within 1,000 feet of university.
299	893.13 (1) (f) 2.	2nd	Sell, manufacture, or deliver s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs within 1,000 feet of public housing facility.
300	893.13 (6) (a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
301	893.13 (7) (a) 8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

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302	893.13 (7) (a) 9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
303	893.13 (7) (a) 10.	3rd	Affix false or forged label to package of controlled substance.
304	893.13 (7) (a) 11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
305	893.13 (8) (a) 1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
306	893.13 (8) (a) 2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
	893.13 (8) (a) 3.	3rd	Knowingly write a prescription for a controlled substance for a

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307	fictitious person.		
308	893.13 (8) (a) 4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
309	918.13 (1) (a)	3rd	Alter, destroy, or conceal investigation evidence.
310	944.47 (1) (a) 1.-2.	3rd	Introduce contraband to correctional facility.
311	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
312	985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
313	Section 4. This act shall take effect October 1, 2006.		



Transportation Committee

**Tuesday, March 14, 2006
3:00 PM - 4:00 PM
404 HOB**

AMENDMENT PACKET

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 963

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER ___

Council/Committee hearing bill: Transportation
Representative(s) Gannon offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (fff) is added to subsection (4) of
section 320.08056, Florida Statutes, to read:

320.08056 Specialty license plates.--

(4) The following license plate annual use fees shall be
collected for the appropriate specialty license plates:

(fff) Donate Organs-Pass It On license plate, \$25.

Section 2. Subsection (58) is added to section 320.08058,
Florida Statutes, to read:

320.08058 Specialty license plates.--

(58) DONATE ORGANS-PASS IT ON LICENSE PLATES.--

(a) The department shall develop a Donate Organs-Pass It
On license plate as provided in this section. The word "Florida"
must appear at the top of the plate, and the words "Donate
Organs-Pass It On" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to Transplant
Foundation, Inc., a tax-exempt organization under s. 501(c)(3)

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

of the Internal Revenue Code which is affiliated with the
University of Miami School of Medicine. Transplant Foundation,
Inc., shall use up to 10 percent of the proceeds from the annual
use fee for marketing and administrative costs that are directly
associated with the management and distribution of the proceeds.
The remaining proceeds shall be used to provide statewide grants
for patient services, including preoperative, rehabilitative,
and housing assistance, organ donor education and awareness
programs, and statewide medical research.

Section 3. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to license plates; amending ss. 320.08056
and 320.08058, F.S.; creating a Donate Organs-Pass It On
license plate; providing for the distribution and use of
annual use fees received from the sale of such plates;
providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 1049

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

1 Council/Committee hearing bill: Transportation

2 Representative(s) Traviesa offered the following:

3
4 **Amendment (with a title amendment)**

5 Remove line(s) 42 and insert:

6 the driver's license of a person 21 years of age or older, other

7
8 ===== T I T L E A M E N D M E N T =====

9 Remove line(s) 7 and insert:

10 withhold the issuance of, or suspend or revoke, the

000000

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1049-001

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HB 1077

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Transportation

Representative(s) Russell offered the following:

Amendment #1 (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (4) of section 320.27, Florida Statutes, is amended to read:

320.27 Motor vehicle dealers.--

(4) LICENSE CERTIFICATE.--

(a) A license certificate shall be issued by the department in accordance with such application when the application is regular in form and in compliance with the provisions of this section. The license certificate may be in the form of a document or a computerized card as determined by the department. The actual cost of each original, additional, or replacement computerized card shall be borne by the licensee and is in addition to the fee for licensure. Such license, when so issued, entitles the licensee to carry on and conduct the business of a motor vehicle dealer. Each license issued to a

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

franchise motor vehicle dealer expires annually on December 31 unless revoked or suspended prior to that date. Each license issued to an independent or wholesale dealer or auction expires annually on April 30 unless revoked or suspended prior to that date. Not less than 60 days prior to the license expiration date, the department shall deliver or mail to each licensee the necessary renewal forms. Each independent dealer shall certify that the dealer principal (owner, partner, officer of the corporation, or director) has completed 8 hours of continuing education prior to filing the renewal forms with the department. Such certification shall be filed once every 2 years commencing with the 2006 renewal period. The continuing education shall include at least 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics. Continuing education shall be provided by dealer schools licensed under paragraph (b) either in a classroom setting or by correspondence. Such schools shall provide certificates of completion to the department and the customer which shall be filed with the license renewal form, and such schools may charge a fee for providing continuing education. Any licensee who does not file his or her application and fees and any other requisite documents, as required by law, with the department at least 30 days prior to the license expiration date shall cease to engage in business as a motor vehicle dealer on the license expiration date. A renewal filed with the department within 45 days after the expiration date shall be accompanied by a delinquent fee of \$100. Thereafter, a new application is required, accompanied by the initial license fee. A license certificate duly issued by the department may be modified by endorsement to show a change in the name of the licensee, provided, as shown by affidavit of the licensee, the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

majority ownership interest of the licensee has not changed or the name of the person appearing as franchisee on the sales and service agreement has not changed. Modification of a license certificate to show any name change as herein provided shall not require initial licensure or reissuance of dealer tags; however, any dealer obtaining a name change shall transact all business in and be properly identified by that name. All documents relative to licensure shall reflect the new name. In the case of a franchise dealer, the name change shall be approved by the manufacturer, distributor, or importer. A licensee applying for a name change endorsement shall pay a fee of \$25 which fee shall apply to the change in the name of a main location and all additional locations licensed under the provisions of subsection (5). Each initial license application received by the department shall be accompanied by verification that, within the preceding 6 months, the applicant, or one or more of his or her designated employees, has attended a training and information seminar conducted by a licensed motor vehicle dealer training school. Any applicant for a new franchised motor vehicle dealer license who has held a valid franchised motor vehicle dealer license continuously for the past 2 years, and who remains in good standing with the department, is exempt from the prelicensing training requirement. Such seminar shall include, but is not limited to, statutory dealer requirements, which requirements include required bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and such other information that in the opinion of the department will promote good business practices. No seminar may exceed 8 hours in length.

Section 2. Subsection (3) of section 320.60, Florida Statutes, is amended to read:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

320.60 Definitions for ss. 320.61-320.70.--Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(3) "Demonstrator" means any new motor vehicle that which is carried on the records of the dealer as a demonstrator and is used by, being inspected or driven by the dealer or his or her employees, or driven by prospective customers for the purpose of demonstrating vehicle characteristics in the sale or display of motor vehicles sold by the dealer.

Section 3. Subsection (36) is added to section 320.64, Florida Statutes, to read:

320.64 Denial, suspension, or revocation of license; grounds.--A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(36)(a) Notwithstanding the terms of any franchise agreement, in addition to any other statutory or contractual rights of recovery after the voluntary or involuntary termination of a franchise, failing to pay the motor vehicle dealer, within 90 days after the effective date of the termination, cancellation, or nonrenewal, the following amounts:

1. The net cost paid by the dealer for each new motor vehicle in the dealer's inventory with mileage of 2,000 miles or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

114 less, exclusive of mileage placed on the vehicle before it was
115 delivered to the dealer;

116 2. The current price charged for each new, unused,
117 undamaged, or unsold part or accessory that:

118 a. Is in the current parts catalogue and is still in the
119 original, resalable merchandising package and in an unbroken
120 lot, except that sheet metal may be in a comparable substitute
121 for the original package, and

122 b. Was purchased by the dealer directly from the
123 manufacturer or distributor or from an outgoing authorized
124 dealer as a part of the dealer's initial inventory;

125 3. The fair market value of each undamaged sign owned by
126 the dealer which bears a trademark or tradename used or claimed
127 by the applicant or licensee or its representative which was
128 purchased from or at the request of the applicant or licensee or
129 its representative;

130 4. The fair market value of all special tools, data
131 processing equipment, and automotive service equipment owned by
132 the dealer which:

133 a. Were recommended in writing by the applicant or
134 licensee or its representative and designated as special tools
135 and equipment;

136 b. Were purchased from or at the request of the applicant
137 or licensee or its representative; and

138 c. Are in usable and good condition except for reasonable
139 wear and tear; and

140 5. The cost of transporting, handling, packing, storing,
141 and loading any property subject to repurchase under this
142 section.

143 (b) This subsection does not apply to a termination,
144 cancellation, or nonrenewal that is implemented as a result of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

145 the sale of the assets or stock of the dealer. The dealer shall
146 return the property listed in this subsection to the licensee
147 within 90 days after the effective date of the termination,
148 cancellation, or nonrenewal. The licensee shall supply the
149 dealer with reasonable instructions regarding the method by
150 which the dealer must return the property. The compensation for
151 the property shall be paid by the licensee within 60 days after
152 the tender of inventory and other items, if the dealer has clear
153 title to the inventory and other items and is in a position to
154 convey that title to the manufacturer or distributor. If the
155 inventory or other items are subject to a security interest, the
156 licensee may make payment jointly to the dealer and the holder
157 of the security interest.

158
159 A motor vehicle dealer who can demonstrate that a violation of,
160 or failure to comply with, any of the preceding provisions by an
161 applicant or licensee will or can adversely and pecuniarily
162 affect the complaining dealer, shall be entitled to pursue all
163 of the remedies, procedures, and rights of recovery available
164 under ss. 320.695 and 320.697.

165 Section 4. Subsections (1) and (5) of section 320.642,
166 Florida Statutes, are amended and subsections (7) and (8) are
167 added to that section, to read:

168 320.642 Dealer licenses in areas previously served;
169 procedure.--

170 (1) Any licensee who proposes to establish an additional
171 motor vehicle dealership or permit the relocation of an existing
172 dealer to a location within a community or territory where the
173 same line-make vehicle is presently represented by a franchised
174 motor vehicle dealer or dealers shall give written notice of its

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

175 intention ~~by certified mail~~ to the department. Such notice shall
176 state:

177 (a) The specific location at which the additional or
178 relocated motor vehicle dealership will be established.

179 (b) The date on or after which the licensee intends to be
180 engaged in business with the additional or relocated motor
181 vehicle dealer at the proposed location.

182 (c) The identity of all motor vehicle dealers who are
183 franchised to sell the same line-make vehicle with licensed
184 locations in the county or any contiguous county to the county
185 where the additional or relocated motor vehicle dealer is
186 proposed to be located.

187 (d) The names and addresses of the dealer-operator and
188 principal investors in the proposed additional or relocated
189 motor vehicle dealership.

190

191 Immediately upon receipt of such notice the department shall
192 cause a notice to be published in the Florida Administrative
193 Weekly. The published notice shall state that a petition or
194 complaint by any dealer with standing to protest pursuant to
195 subsection (3) must be filed not more than 30 days from the date
196 of publication of the notice in the Florida Administrative
197 Weekly. The published notice shall describe and identify the
198 proposed dealership sought to be licensed, and the department
199 shall cause a copy of the notice to be mailed to those dealers
200 identified in the licensee's notice under paragraph (c).

201 (5) (a) The opening or reopening of the same or a successor
202 motor vehicle dealer within 12 months is ~~shall~~ not be considered
203 an additional motor vehicle dealer subject to protest within the
204 meaning of this section, if:

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205 1.(a) The opening or reopening is within the same or an
206 adjacent county and is within 2 miles of the former motor
207 vehicle dealer location;;

208 2.(b) There is no dealer within 25 miles of the proposed
209 location or the proposed location is further from each existing
210 dealer of the same line-make than the prior location is from
211 each dealer of the same line-make within 25 miles of the new
212 location;

213 3.(c) The opening or reopening is within 6 miles of the
214 prior location and, if any existing motor vehicle dealer of the
215 same line-make is located within 15 miles of the former
216 location, the proposed location is no closer to any existing
217 dealer of the same line-make within 15 miles of the proposed
218 location; or

219 4.(d) The opening or reopening is within 6 miles of the
220 prior location and, if all existing motor vehicle dealers of the
221 same line-make are beyond 15 miles of the former location, the
222 proposed location is further than 15 miles from any existing
223 motor vehicle dealer of the same line-make.

224 (b) Any other ~~such~~ opening or reopening shall constitute
225 an additional motor vehicle dealer within the meaning of this
226 section.

227 (c) If a motor vehicle dealer has been opened or reopened
228 pursuant to this subsection, the licensee may not propose a
229 motor vehicle dealer of the same line-make to be located within
230 4 miles of the previous location of such dealer for 2 years
231 after the date the relocated dealership opens.

232 (7) Measurements of the distance between proposed or
233 existing dealer locations required by this section shall be
234 taken from the geometric centroid of the property that

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encompasses all of the existing or proposed motor vehicle dealer operations.

(8) The department shall not be obligated to determine the accuracy of any distance asserted by any party in a notice submitted to it. Any dispute concerning a distance measurement asserted by a party shall be resolved by a hearing conducted in accordance with ss. 120.569 and 120.57.

Section 5. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to motor vehicle dealers; amending s. 320.27, F.S.; deleting requirements for certain licensure applicants to attend training seminars; amending s. 320.60, F.S.; clarifying the definition of the term "demonstrator"; amending s. 320.64, F.S.; prohibiting a licensee from failing to make certain payments to a motor vehicle dealer after the termination of the dealer's franchise; providing guidelines for specific payments; amending s. 320.642, F.S.; deleting a requirement that certain notices be sent by certified mail; revising criteria for the opening or reopening of the same or a successor dealer within 12 months; limiting the location of a licensee if a dealer has been opened or reopened pursuant to the section; providing criteria for measuring the distance between dealer location; exempting the Department of Highway Safety and Motor Vehicles from

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266 | determining whether distance requirements are met;
267 | specifying that disputes about whether the distance
268 | requirements have been met are to be settled by chapter
269 | 120, F.S., hearings; providing an effective date.
270 |